COURT, U. S.

IN THE

Supreme Court of the United States

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SUPREME COURT,

October Term, 1966

No. 32

JAMES R. HOFFA

Petitioner

v.

UNITED STATES

No. 33

THOMAS EWING PARKS

Petitioner

v.

UNITED STATES

No. 34

LARRY CAMPBELL

Petitioner

v.

UNITED STATES

No. 35

EWING KING

Petitioner

v.

UNITED STATES

MOTION BY UNIFORMED SANITATIONMEN'S ASSOCIATION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND PROPOSED BRIEF

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February 2, 1967.

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Uniformed Sanitationmen's Association hereby moves for leave to file the accompanying brief *amicus curiae* in support of petitioners' Motion for Relief Because

of Government Wiretapping, Electronic Eavesdropping and Other Intrusions.

The interest of the *amicus curiae* is set forth at pages 1-3 of the accompanying brief and the same is incorporated herein by reference.

This brief is submitted because no brief or other memorandum of law has been filed by the petitioners in support of their motion and because the *amicus curiae* believes that the interest of the public and of the trade union movement in general is not adequately presented in the documents on file in this Court. Furthermore, as appears from the accompanying brief, the *amicus curiae* has a special interest in this situation arising from litigation on a related issue now pending in the Court of Appeals for the Second Circuit.

Respectfully submitted,

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BRIEF OF UNIFORMED SANITATIONMEN'S ASSOCIATION, AS *AMICUS CURIAE*

Interest of Amicus Curiae

Uniformed Sanitationmen's Association (hereinafter the "Association") is a local trade union affiliated with

the International Brotherhood of Teamsters. Its office is in New York City and it is the collective bargaining agent of approximately 10,000 employees of the Department of Sanitation in the City of New York. The Association has an interest in this proceeding because:

1. As a local of the International Brotherhood of Teamsters, it is concerned with protecting the person of the General President of the International Union against unlawful governmental conduct of the nature described herein. The right of association protected by the Constitution of the United States and by the labor laws of this country have no meaning if trade union officials are to be subjected to repeated unjust prosecutions and if such cases are to be carried on by means that are not only morally reprehensible but legally impermissible.

2. Members of this Association have themselves been recently subjected to unlawful wiretapping, in violation of § 605 of the Federal Communications Act of 1934 and perhaps unlawful eavesdropping in violation of the Fourth Amendment to the Constitution, by the City of New York. Such unlawful conduct is the subject of an action now pending in the United States Court of Appeals for the Secoind Circuit, entitled *Uniformed Sanitationmen's Association, et al.* v. *Commissioner of Sanitation of the City of New York et al.*, an action which, *inter alia*, seeks to enjoin the City of New York and its officials from continuing to engage in the interception, divulging, recording and publication of telephone conversations among the individual plaintiffs in that action who are members of the Association.

3. The members of the Association, like all trade union members, and indeed like all citizens, have a deep interest in preventing the conduct which is alleged to have been engaged in by the government in this case. The right to counsel and the right to due process of law are empty rights if police agents are to be given license to tap the

wires used by defendants and their lawyers and to eavesdrop on conferences held by defendants and counsel in the midst of a criminal trial.

Statement

The motion filed by petitioners herein and the affidavits submitted in support thereof allege:

1. That an electronic technician regularly employed by the FBI to install wiretaps and eavesdrop devices was directed by his FBI supervisor and by Walter Sheridan, special consultant to the then Attorney General of the United States and the official in charge of the prosecutions against petitioner Hoffa, to tap the wires of petitioner Hoffa and his counsel during the trial of this cause at Chattanooga, and to install eavesdrop devices not only in the rooms of said petitioner and his counsel but also in the rooms occupied by the jury (Motion, pp. 1a-11a).

2. That Sheridan had in his possession at about the time of the indictment herein tapes of conversations between petitioner Hoffa and his counsel, secured by eavesdropping and wiretapping. These tapes were played by Sheridan for three public officials of the City of Huntington, West Virginia, on several occasions, and were recorded while the indictment in this case was under consideration by the grand jury (Motion, pp. 21a-40a).

4. That prior to the indictment herein, Peter Quaglia, a police officer employed by the City of Detroit, had been instructed to monitor and record conversations between petitioner Hoffa and his counsel by means of a telephone tap on counsel's wire. In the opinion of Officer Quaglia these recordings were made for a federal agency and not for the Detroit police department (Motion, pp. 41a-47a).

5. That two persons high in government councils, both in a position to have full and accurate knowledge of the

facts, have admitted that petitioner Hoffa's wire was subject to extensive tapping during the course of his trial (Motion, pp. 16a-20a).

ARGUMENT

I

Press reports since the filing of the motion herein have raised the possibility that all of these allegations may be denied. However, the fact that petitioner Hoffa's wires were tapped and that his private conversations overheard by electronic devices should occasion no surprise, given the importance of the prosecution in the mind of the Justice Department and the attitude of the highest officials of the Department toward wiretapping and eavesdropping during the period in question.

It can hardly be denied that telephone conversations of petitioner Hoffa have been tapped over a period of many years. Extensive recordings of such taps were disclosed in the hearings before the Senate Committee on Improper Activities in the Labor or Management Field, 85th Cong., 2d Sess., August 1957, pp. 5116, 5120, 5156, 5166, 5188, 5194, 5200, 5260. Even in this case there was a substantial amount of electronic surveillance of petitioner and his counsel and an undetermined number of conversations were recorded by telephone taps or eavesdrop devices. VI D.A. 3026a. See n. 4 of the decision in this case; also *Osborn* v. *United States,* No. 29, this Term. Several efforts were made during the course of the trial to investigate the matter thoroughly but they were unsuccessful. See, for example, II D.A. 1022a; VI D.A. 3021a-3062a.

As the present motion points out, there have also been occasional accidental discoveries of wiretaps or eavesdropping devices during the course of proceedings in which petitioner Hoffa was interested (Motion, 48a-55a).

II

Furthermore, it has recently been disclosed that the policy of the Department of Justice and the FBI with respect to wiretapping and eavesdropping underwent a change in about 1961. Prior to that date the FBI used telephone taps only in cases involving internal security or where human life was imperiled, and then only on the specific authorization of the Attorney General. *Hearing before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary*, 86th Cong., 1st Sess., p. 1036; 87th Cong., 1st Sess., p. 354.

Within the past weeks it has been disclosed that there was a substantial change in policy with the change of Administration in 1961. See correspondence between J. Edgar Hoover, director of the FBI, and Congressman H. R. Gross, and the responses thereto by former Attorney General (now Senator) Robert F. Kennedy (New York Times, December 11, 1966, pp. 1, 84, and December 12, 1966, p. 33). Included in that correspondence is a memorandum dated August 17, 1961 from Courtney Evans, then assistant director of the FBI, in which approval was sought and obtained from the Attorney General to use "microphone surveillance • • • both in security and major criminal cases."

That this is a "major criminal case" will not be challenged, especially since the cases in which electronic surveillance has been used indicates that the Administration's interpretation of those words has been very broad. See cases cited below, page 6.

III

This Court has long been concerned with the problems of wiretapping and eavesdropping, and the evils thereof have been fully discussed in many cases, in both majority and dissenting opinions, since *Olmstead* v. *United States*, 277 U.S. 438. See, for example, *Nardone* v. *United States*,

302 U.S. 379, 308 U.S. 338; *Goldman* v. *United States,* 316 U.S. 129; *Goldstein* v. *United States,* 316 U.S. 114; *On Lee* v. *United States,* 343 U.S. 747; *Silverman* v. *United States,* 365 U.S. 505; *Lopez* v. *United States,* 373 U.S. 427.

Public and congressional concern with the problem has likewise arisen as a result of disclosure of alarming "improved" methods of surveillance accompanied by equally alarming disclosures of the increased use of taps and "bugs" by both federal and local police officials. See *Hearings Before the Subcommittee on Administrative Practice and Procedure Committee on the Judiciary, United States Senate,* 89th Cong., 1st Sess.; Dash, Schwartz & Knowlton, THE EAVESDROPPERS (1959). And note reference to the subject in the State of the Union Message of the President on January 10, 1967.

There have been further recent developments which give hope that this Court will continue to deal with the problem with vigor and that the Justice Department has significantly changed its policy in recognition of the evils of wiretapping. Following upon this Court's decision in *Black* v. *United States,* 385 U.S. 26, and perhaps as a result of it, the Justice Department, acting in some cases *sua sponte,* has recently advised both this Court and the courts of appeal that its records disclosed the existence of tapping and/or eavesdropping. *Schipani* v. *United States,* No. 504 October Term 1966; *DeNiro* v. *United States,* Nos. 17053-17055 pending in the Court of Appeals for the 6th Circuit (see foonote 5 in the Supplemental Memorandum for the United States in the *Schipani* case, *supra*) and *United States* v. *Taglianetti,* No. 6829, pending in the Court of Appeals for the 1st Circuit (New York Times December 28, 1966, p. 19); see also *Rainwater* v. *Florida,* No. 555 October Term 1966.

IV

Government surveillance over conversations by any defendant in a criminal case is reprehensible and ought to be recognized as a serious invasion of the rights of the individual, in violation of both the Fourth and Fifth Amendments. *Cf. Olmstead* v. *United States, supra;* see also dissenting and concurring opinions in *Goldman* v. *United States, supra,* at 136; *On Lee* v. *United States, supra,* at 758; *Lopez* v. *United States, supra,* at 446, 466.

But in the present case (as in *Black, supra*) the conduct of the Government is much more reprehensible because conversations between petitioner Hoffa and his counsel were overheard—and that not only before the trial but during the trial itself! All of the evils which necessarily result from any surreptitious intrusion into the private lives of citizens becomes magnified many times when the confidential relationship between attorney and client is invaded. Rigid enforcement of the privilege of communications between a defendant and his counsel is necessary if our system of justice is to be preserved. Unless counsel and his client may confer in confidence, a fair trial is obviously impossible. The Court recognized this in its summary disposition of the conviction in *Black, supra.* See also *Coplon* v. *United States,* 191 F. 2d 749 (C.A.D.C. 1951), cert. den. 342 U.S. 926; *Caldwell* v. *United States,* 205 F. 2d 879 (C.A.D.C. 1953).

V

One further point remains to be made. It would appear that some of the tapping and eavesdropping took place prior to the indictment in this case and that this likewise included conversations between petitioner and counsel (see Motion 21a-35a). If this is found by the Court to be true, the indictment should be dismissed. While an indictment may be founded on hearsay evidence, *Costello* v. *United States,* 350 U.S. 359, this Court ought not to countenance

the bringing of an indictment based on evidence obtained in violation of law, 47 U.S.C. § 605, or in violation of the Fourth Amendment, *Silverman* v. *United States,* 365 U.S. 505. All of the public policy considerations which went into this Court's holding in the *Nardone* decisions, *supra,* are applicable here. Wiretapping and eavesdropping do not meet those "civilized standards of procedure and evidence" required by this Court in *McNabb* v. *United States,* 318 U.S. 332, 340.

In view of the danger of ever-increasing invasion of the privacy of all citizens, this Court should not permit the use of evidence so tainted for any purpose in any court coming under its supervisory jurisdiction.

Respectfully submitted,

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